

[By Peter Schroeder, The Hill](#)

The fight over new debit card fee limits, already lively, is further intensifying, as the deadline for implementing new restrictions looms large.

Banking groups and retailers that have energetically lobbied on Capitol Hill are now taking their fight to the courts.

Eight banking groups, including the American Bankers Association and the Financial Services Roundtable, filed an amicus brief Friday supporting TCF National Bank's lawsuit against the Federal Reserve. The suit challenges the constitutionality of the so-called "Durbin amendment."

That amendment, backed primarily by Sen. Dick Durbin (D-Ill.) and included in the Dodd-Frank financial reform law, requires the Fed to impose new limits on the fees banks can charge retailers for swiping their debit cards.

With an estimated \$12 billion a year in revenue at stake, the amendment and subsequent rulemaking have been subject to intense lobbying from both the banking and retail industries.

The Fed's proposed rules, unveiled in December and slated to be finalized in April, would slash bank fees from the current 44-cent average to seven to 12 cents per swipe.

In the October lawsuit TCF filed in federal court, the Minnesota-based bank argued the provision "irrationally, prejudicially and illegally" interferes with the company's business. A hearing is set for April 4 –less than three weeks before the Fed is due to finish the rules.

In their supporting documents, the banking group warned that the Fed's rules could "wreak havoc on this vital component of our nation's economy."

The rule, as written in the suit, "threatens severe adverse consequences for consumers, the financial industry, and the economy."

The groups go on to argue that the Durbin amendment requires the Fed to establish standards that allow debit card issuers to assess fees to recover costs tied to debit transactions. However, what the Fed did instead was establish "harsh price caps," the groups said. As a result, the rules are "unconstitutionally confiscatory."

"Implementation of the Durbin amendment would cause irreparable harm to issuers and consumers, and ... a preliminary injunction would be in the public interest," they wrote.

One week earlier, the Merchants Payment Coalition, which represents several trade groups in favor of the new limits, filed their own brief, arguing TCF's case is without merit.

The briefs come as the fee fight has reached new heights. With the deadline for finalizing the rules looming, both sides continue to make their cases privately and publicly.

Banking groups have taken out ads on D.C. public transportation and local television blasting the provision.

On Thursday a group of small business owners withstood the rain to rally outside the Capitol in favor of the amendment. While Durbin was unable to make it due to a scheduling conflict, Rep. Peter Welch (D-Vt.), the measure's primary backer in the House, made an appearance.

Retailers have argued that banks have reaped huge profits from escalating fees, and that the

new limits will allow them to lower their prices for consumers.

"What this legislation is about is giving you a fair shot," Welch told those gathered, organized by the group Reform Swipe Fees Now.

Meanwhile, banking groups are hoping lawmakers will introduce legislation that would delay the implementation of the provision – possibly as early as this week. Members of Congress from both parties have indicated they have qualms about the provision as is, leaving a glimmer of hope for banks that a legislative fix could gain traction quickly.

But merchants are standing firm, saying any delay would drag down the economy.

"A delay would cost consumers \$1 billion a month, and it would kill 95,000 new jobs a year," said Doug Kantor, counsel to the Merchants Payments Coalition.

Raising the stakes further, banks are reportedly mulling capping the size of debit card transactions to \$50 or \$100 as a way to deal with the new fees. Banking lobbyists insist they are sticking up for consumers, cautioning that the limits will require them to slash benefits, like rewards programs or free checking accounts, and hike fees.